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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,761	07/17/2003	Jean-Louis Gueret	124371	9154
92793	7590	07/26/2010	EXAMINER	
Oliff & Berridge, PLC P.O. Box 320850 Alexandria, VA 22320-4850			STETZ, RACHEL RUNNING	
			ART UNIT	PAPER NUMBER
			3732	
			NOTIFICATION DATE	DELIVERY MODE
			07/26/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/620,761

**Applicant(s)**

GUERET, JEAN-LOUIS

**Examiner**

RACHEL R. STEITZ

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 85-100, 103 and 104 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 85-100, 103, and 104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 94 is objected to because of the following informalities: Claim 94 contains a typographical error, see line 1, "Akihiro receptacle" should be changed to - -A receptacle- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 103 and 104 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 103, lines 8-10 state, "each container, except for a bottom container along the stacking axis, comprises a bottom wall", however, it is not disclosed in the specification how the applicant makes the invention without the bottom container comprising a bottom wall. Therefore, the limitation "each container, except for a bottom container along the stacking axis, comprises a bottom wall", constitutes as new matter.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 103 and 104 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 103, lines 8-10 state, "each container, except for a bottom container along the stacking axis, comprises a bottom wall"; however, it is unclear how the bottom container which contains a product can operate without comprising a bottom wall. It will be examined as each container having a bottom wall or a wall located in the container to contain the product.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 85-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo (JP 63-17031) in view of Gueret (CN1270786A) and Rapchak et al. (US 5,667,094).

Kogyo discloses a device comprising at least two containers (2,2A) configured to be superposable on a stacking axis. One container (2) is configured as a lid with a hinge (9) with the container added thereto and at least one containers is fixed in a removable manner on the container immediately beneath it (via components 8) and the housing

can be opened independently of one another forming a closure lid for the container that is immediately beneath it when the containers are superposed. Each container defines a housing (i.e. the inside of the container). The device further comprises a lid (3) and an applicator member (5c, which shows two applicator members) is secured in one of the housings (see figure 1) wherein one of the containers is configured to form a closure lid for closing the other container (see Figure 2). The containers pivot about one another about an axis (i.e. horizontal axis) not parallel to a stacking axis (i.e. vertical axis) and each container along the stacking axis comprises a bottom wall (see Figure 23). There are at least two hinges (9). The hinges are angularly offset. One of the housings contains cosmetic, and each housing contains only one product (i.e. eyeshadow, or blush see Figures 13 and 14). Though only two containers are shown, Kogyo discloses that more containers can be added as desired. Regarding the limitation of the axis of rotation of the hinges not being parallel, it is noted that in figure 1, the axis of rotation of the hinges are perpendicular and in figures 21-23 they are angularly offset so as not to be parallel. Kogyo does not disclose every bottom wall except the bottom container having a sealing lip extending downward from the bottom wall configured to cooperatively overlap with a surface within the housing defined by the container below it. Also Kogyo does not disclose a receptacle body containing a substance with an applicator member secured to the receptacle body during application of the substance, with a closure cap that is configured to be removably fixed to the receptacle body wherein the receptacle body is of a different shape than the containers.

Rapchak et al. teach a sealing lip (23) extending downward from a wall configured to cooperatively overlap with a surface within a housing defined by the container (see Figures 1 and 2; column 2, lines 5-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bottom walls of Kogyo with a sealing lip that extends downward from the bottom wall and overlaps with a surface within the housing as taught by Rapchak et al. in order to provide a secure seal with the cosmetic container below it. With regards to applicant's limitation "each container, except for a bottom container along the stacking axis" it is noted that there would be no need for a sealing lip to be placed on the bottom container since it would not function to seal the container below it since there is not a container located below the bottom.

Gueret discloses forming the bottom of a container (11) such that it may be used as a closure cap for a different receptacle (111) wherein the receptacle body contains a substance (P1) and has an applicator member (20) secured to the receptacle body during the application of the substance with the applicator member and the receptacle (111) body is of a different shape than the container (11) (see Figures 2A and 2B). It would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo as modified by Rapchak et al. such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Gueret in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

9. Claims 103 and 104 are rejected, as best understood) under 35 U.S.C. 103(a) as being unpatentable over Kogyo (JP 63-17031) in view of Gueret (CN1270786A) and Leboucher (US 6,352,171).

Kogyo discloses at least two containers (2,2A) each defining a housing (i.e. inside the containers) each housing containing only one product and configured in such a manner to be superposable on a stacking axis (see Figures 1 and 2), wherein each container comprises a bottom wall (6) which holds the product (Figure 12), wherein at least two of the containers are pivoted relative to another of the at least two containers via a hinge (8) about an axis of rotation (via horizontal axis) that is not parallel to the stacking axis (via vertical axis). Figures 21-23 show the hinges being angularly offset obliquely around the stacking axis of the containers. Kogyo does not disclose a receptacle body containing a substance with an applicator member secured to the receptacle body during application of the substance, with a closure cap that is configured to be removably fixed to the receptacle body wherein the receptacle body is of a different shape than the containers. Also Kogyo does not disclose the hinge being integrally molded between at least two of the containers wherein the hinge is a film hinge.

Gueret discloses forming the bottom of a container (11) such that it may be used as a closure cap for a different receptacle (111) wherein the receptacle body contains a substance (P1) and has an applicator member (20) secured to the receptacle body during the application of the substance with the applicator member and the receptacle (111) body is of a different shape than the container (11) (see Figures 2A and 2B). It

would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Gueret in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

Leboucher teaches making a cosmetic container with an integrally molded hinge (4) (i.e. film hinge) located between the containers (column 1; lines 60-65 and column 2, lines 35-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hinge of Kogyo with a film hinge as taught by Leboucher since the simple substitution of one known element (e.g. hinge) for another (e.g. film hinge) to obtain predictable result (pivotal motion) would have been obvious to one having ordinary skill in the art. *KSR International co. V. Teleflex Inc.*, 550 U.S. --, 82 USPQ2d 1385 (2007).

### ***Response to Arguments***

10. Applicant's arguments filed June 11, 2010 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL R. STEITZ whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rachel Running Steitz/  
Examiner  
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